

6 Stays and Expedite Requests

6.1 Stays Generally

A stay prevents DHS from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. This chapter provides general guidance regarding stays. For particular cases, parties should consult the controlling law and regulations. See Immigration and Nationality Act § 240(b)(5); 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), 1003.23(b)(4)(ii), 1003.23(b)(4)(iii)(C).

The Board also has the authority to stay the execution of an Immigration Judge's decision in bond proceedings. See Chapter 7.3(a)(iv) (Stays).

6.2 Automatic Stays

(a) *Qualifying appeals.* — There are limited circumstances in which an order of removal, deportation, or exclusion is automatically stayed:

- direct appeal of an Immigration Judge's decision on the merits of the case (not including bond and custody determinations)
- appeal of an Immigration Judge's denial of a motion to reopen *deportation* proceedings conducted in absentia under prior section 242B of the Immigration and Nationality Act
- the 30-day period for filing either of these appeals, unless the right to appeal has been waived

An appeal must be timely and properly filed for an automatic stay to take effect.

There are no other instances in which an automatic stay of removal, deportation, or exclusion takes effect.

(b) *Qualifying motions.* — There are no motions that are filed with the Board that result in an automatic stay of removal, deportation, or exclusion.

(c) Duration. — An automatic stay of removal, deportation, or exclusion expires when the Board renders a final decision in the case. Occasionally, when the Board grants a temporary stay, the Board may vacate or dissolve the stay before reaching the merits of the appeal or motion.

(d) Adjudication and notice. — When a stay is automatic, the Board does not issue a written order on the stay request.

6.3 Discretionary Stays

(a) Jurisdiction. — The Board is authorized to grant stays as a matter of discretion, but only for matters within the Board's jurisdiction. See Chapter 1.4 (Jurisdiction and Authority). The Board entertains stays only when an appeal, a motion to reopen, or a motion to reconsider is pending before the Board.

(b) Motion required. — A request for a discretionary stay of removal, deportation, or exclusion should be made in the form of a written motion. See Chapter 6.4 (Procedure for Requesting a Discretionary Stay). When circumstances require immediate attention from the Board, the Board may, at its discretion, entertain a telephonic stay request. See Chapter 6.4(d)(i) (Emergency). Motions requesting a discretionary stay are not automatically granted.

(c) Pending motions. — A pending motion to stay removal, deportation, or exclusion does not itself stay execution of the order. An order of removal, deportation, or exclusion remains executable unless and until such time as the Board *grants* the motion to stay.

(d) Adjudication and notice. — When a stay is granted as a matter of discretion, the Board issues a written order.

(e) Duration. — A discretionary stay of removal, deportation, or exclusion expires when the Board renders a final decision in the case.

6.4 Procedure for Requesting a Discretionary Stay

(a) Who may request. — An alien (or an alien's representative) may request a discretionary stay of removal, deportation, or exclusion only if the alien's case is currently before the Board and the alien is subject to a removal, deportation, or exclusion order.

(b) Timing of request. — A request to stay removal, deportation, or exclusion may be submitted at any time during the pendency of a case before the Board.

(c) Form of request. — Requests to stay removal, deportation, or exclusion must be made in writing. The Board prefers that stay requests be submitted in the form of a “MOTION TO STAY REMOVAL.” See Appendix F (Sample Cover Page).

(i) Contents. — The motion should contain a complete recitation of the relevant facts and case history and indicate the current status of the case. The motion must also contain a specific statement of the time exigencies involved. Motions containing vague or general statements of urgency are not persuasive.

A copy of the existing Immigration Judge or Board order should be included, when available. When the moving party does not have a copy of the order, the moving party should provide the date of the Immigration Judge’s decision and a detailed description of both the ruling and the basis of that ruling, as articulated by the Immigration Judge. If the facts are in dispute, the moving party should furnish evidence supporting the motion to stay.

(ii) Format. — The motion should comply with the general rules for filing motions. See Chapter 5.2 (Filing a Motion). The motion must include a Proof of Service. See Chapter 3.2 (Service), Appendix G (Sample Proof of Service).

(iii) Fee. — A motion to stay removal, deportation, or exclusion does not, by itself, require a filing fee. The underlying appeal or motion, however, may still require a fee. See Chapter 3.4 (Filing Fees).

(d) Submitting the request. — The Board categorizes stay requests into two categories: emergency and non-emergency.

(i) Emergency. — The Board may rule immediately on an “emergency” stay request. An emergency stay request may be submitted only by an alien in custody who is facing imminent removal, deportation, or exclusion. Accordingly, an alien not in DHS custody must surrender to DHS custody, pursuant to a request by DHS, before an emergency stay will be considered by the Board.

Instructions for filing a stay motion in an emergency situation can be obtained at any time by calling (703) 605-1007. The Board will entertain an emergency stay request only on weekdays from 9:00 a.m. to 5:30 p.m. (Eastern time), except federal holidays. When an emergency stay request is granted, the Board promptly notifies the parties.

(ii) Non-emergency. — The Board does not rule immediately on a “non-emergency” stay request, but considers the request during the normal course of adjudication. A non-emergency stay request may be submitted by an alien who either is not in detention or is in

detention but is not facing imminent removal, deportation, or exclusion. A non-emergency stay request may be submitted concurrently with an appeal or motion, or at a later date.

A non-emergency stay request may be supplemented by an emergency stay request if the qualifying circumstances transpire (such as when an alien reports to DHS custody for deportation).

6.5 Expedite Requests

(a) Requirements. — Appeals and motions may be expedited only upon the filing of a motion to expedite and a demonstration of impending and irreparable harm or similar good cause. The motion must contain a complete articulation of the reasons to expedite and the consequences to the moving party if the request is not granted.

Expedite requests are generally not favored and should be requested only in compelling circumstances. Examples of appropriate reasons to request expedited treatment include: (i) imminent removal from the United States; (ii) imminent ineligibility for relief, such as a minor alien “aging out” of derivative status; (iii) circumstances threatening to moot the appeal absent prompt action by the Board; and (iv) a health crisis precipitating a need for immediate Board action.

(b) Procedure. — Motions to expedite should be filed in accordance with the general rules and procedures for other motions. See Chapter 5.2 (Filing a Motion). Any request for expeditious processing should be made through a written “MOTION TO EXPEDITE” that bears the name and alien registration number (“A number”) of the affected alien and articulates the grounds for the request. Use of a cover page is highly recommended. See Appendix F (Sample Cover Page). In a genuine emergency, a party may contact the Clerk’s Office of the Board by telephone. See Appendix B (Directory). Even in such situations, the moving party must be prepared to file a written “MOTION TO EXPEDITE” immediately.

(c) Response. — The Board will consider all expedite requests that are properly filed. When a request is granted, the Board will expedite the case without notifying the parties that the request has been granted. For administrative reasons, the Board cannot reply to all requests.